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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Request of)

SPRINT SPECTRUM L.P. d/b/a)
SPRINT PCS)

For Clarification Concerning)
Reciprocal Compensation for)
Commercial Mobile Radio)
Service Providers)

CC Docket No. 96-98

CC Docket No. 95-185

WT Docket No. 97-201

97-207

To: The Common Carrier Bureau
The Wireless Telecommunications Bureau

COMMENTS OF METROCALL, INC.

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For the most part, Metrocall is in perfect agreement with Sprint PCS's proposal; to wit, that the FCC ought to confirm that CMRS carriers may include in their "base" all incremental costs incurred in terminating local calls. Still, if the FCC is going to undertake this task, it is important for the agency to understand that there are fundamental differences in the way LECs and state PUCs have been treating narrowband CMRS carriers, as opposed to broadband carriers. This disparate treatment is fundamentally unfair to messaging carriers, and violates both the spirit and the letter of the FCC's interconnection rules. Consequently, as the FCC reviews and considers the issues raised by Sprint PCS with respect to broadband CMRS carriers, Metrocall submits that the FCC must also clarify, for the benefit of many LECs and state PUCs, that its reciprocal compensation rules apply with equal force to narrowband messaging carriers.

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COMMENTS OF METROCALL, INC.

Metrocall, Inc. hereby submits this response to the Federal Communications Commission's Public Notice, DA-00-1050 released May 11, 2000. The FCC has solicited comments on the request (the "Request") of Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS") for a Commission ruling confirming and clarifying the specific cost categories that commercial mobile radio service ("CMRS") providers are entitled to recover under Sections 251(b)(5) and 252(d) of the Telecommunications Act of 1996 ("Act").¹

The Sprint PCS Request asks the Commission to issue a ruling confirming the entitlement of CMRS carriers to receive asymmetrical cost-based compensation for the transport and termination functions performed by CMRS carriers in an amount sufficient to cover all of the usage sensitive components of delivering the call to the CMRS customer. Sprint PCS sought this ruling because various state commissions have issued

¹ 47 U.S.C. §§ 251(b)(5) & 252(d).

rulings pertaining to compensation for the transport and termination functions performed by CMRS carriers that are at odds with the compensation costing principles set forth in earlier Commission decisions.

I. Statement of Interest

Metrocall is currently the third largest narrowband messaging company in the nation (NASDAQ trading symbol: "MCLL"). Through its licensee-subsiidiary, Metrocall USA, Inc., Metrocall provides commercial one-way and two-way messaging services throughout the United States. Through its corporate predecessors, Metrocall has provided local, regional and nationwide messaging services for more than two decades, and it continues to undergo tremendous growth. Metrocall currently serves more than five million subscribers over its messaging networks, and continues to pursue business plans to increase its customer base and its array of communications services nationwide.

Metrocall has entered into reciprocal compensation agreements with a few Local Exchange Carriers ("LECs") throughout the United States, and is thus quite familiar with the CMRS reciprocal compensation issues raised in Sprint's Request. Indeed, in September of 1997, in a matter that somewhat foreshadowed Sprint's Request, Metrocall filed a Petition for Declaratory Ruling with the FCC in which it asked the agency to establish "default proxies" for CMRS messaging carriers. Metrocall noted in its Petition that this was a task the FCC had set-aside during its original LEC/CMRS interconnection proceedings, wherein the agency stated that it would initiate a further proceeding: "to

determine what an appropriate proxy for paging costs would be and, if necessary, to set a specific paging default proxy."²³

Because messaging carriers are entitled to reciprocal compensation under the FCC's rules, and Metrocall is a member of that class of messaging carriers entitled to compensation, Metrocall has standing and is an appropriate party in interest to submit these comments.

II. Messaging Carriers are Entitled to Symmetrical Compensation

For the most part, Metrocall is in perfect agreement with Sprint PCS's proposal; to wit, that the FCC ought to confirm that CMRS carriers may include in their "base" all incremental costs incurred in terminating local calls. Moreover, the suggestion that the FCC adopt rules to guide state public utility commissions concerning LEC/CMRS reciprocal compensation issues is sound.

Still, if the FCC is going to undertake this task, it is important for the agency to understand that there are fundamental differences in the way LECs and state PUCs have been treating narrowband CMRS carriers, as opposed to broadband carriers. This disparate treatment is fundamentally unfair to messaging carriers, and violates both the spirit and the letter of the FCC's interconnection rules. Consequently, as the FCC reviews and considers the issues raised by Sprint PCS with respect to broadband CMRS

² "Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, et al.", First Report and Order, CC Docket Nos. 96-98, et al.; FCC 95-185 at ¶ 1093 (released August 8, 1996) (the "Interconnection Order"), aff'd in part and rev'd in part, Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part and remanded sub nom, AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721 (1999).

³ Metrocall subsequently withdrew its Petition for Declaratory Ruling at the behest of various members of the messaging industry, under the assumption that it would help expedite FCC action on pending complaints filed by various messaging companies vs. various local exchange carriers.

carriers, Metrocall submits that the FCC must also clarify, for the benefit of many LECs and state PUCs, that its reciprocal compensation rules apply with equal force to narrowband messaging carriers.

Perhaps the most significant area in which messaging carriers have been unfairly treated is with respect to “symmetrical” pricing for reciprocal compensation purposes. Sprint PCS notes that the concept of rate symmetry has helped relieve broadband carriers of the “burden of preparing supporting cost studies.”⁴ Sprint PCS White Paper at p. 3. Yet, the FCC’s failure to expressly treat narrowband CMRS carriers the same as broadband CMRS carriers, has led some LECs, and some state PUCs, to impose “TELRIC” study costs on narrowband carriers, or to entirely deny narrowband carriers compensation for termination costs. The time is long overdue for the FCC to consider and acknowledge that narrowband carriers terminate local calls, for all practical purposes, in much the same way as their broadband colleagues. The FCC should affirm that narrowband CMRS carriers should be entitled to use the LECs’ costs as appropriate proxies for determining termination rates.

Metrocall knows from expensive, hard-fought experience, the high cost of the FCC’s prolonged failure to acknowledge that rate symmetry should apply to *all* LEC/CMRS interconnection arrangements. For years, even those LECs that agreed that they could not lawfully charge messaging carriers for delivering their own local calls, nonetheless refused to compensate messaging carriers for the costs of call termination. Then, when some LECs agreed to pay narrowband carriers call termination compensation, they refused to do so until expensive TELRIC studies were produced, and laboriously reviewed by the LEC’s “experts”. Moreover, the termination compensation

rates that these LECs agreed to pay to narrowband carriers have been, for the most part, far lower than the rates paid broadband carriers for identical call termination functions.

The time is long overdue for the FCC's anecdotal "hunch" -- that narrowband networks terminate calls differently from broadband networks -- be reviewed and disproved. Yes, there are obvious RF network differences between narrowband and broadband CMRS carriers. But, there are few if any practical differences in how local calls are terminated on either network. The vast majority of both narrowband and broadband CMRS networks are interconnected with the LEC's network *via* either Type 1 or, more likely for broadband networks, Type 2 circuits. Cellular and PCS networks have sophisticated computer terminals that acknowledge local calls, then route them over the RF network so that they may be terminated at the appropriate end user address; the same is true for narrowband carriers.

Sprint's suggestion that certain aspects of its RF network ought to be covered in its rate base for purposes of termination costs, equally applies to narrowband carriers. If broadband carrier cell sites arguably should be treated as equivalent to LEC end office switches,⁴ the same could be said for narrowband base stations, which similarly relay calls throughout a wide-area messaging network. In short, if the FCC intends to take up Sprint PCS's Request, it must not make the mistake it made last time; it must develop rules and policies that equally apply to both broadband and narrowband carriers.

III. LEC/Messaging Carrier Interconnection Rights & Obligations

The FCC certainly has legal authority, indeed legal primacy, to ensure that messaging carrier interconnection rights and obligations are honored by LECs. A brief

⁴ Sprint PCS White Paper at p. 3.

⁵ Id. at 10

review of recent legal and regulatory precedents underscores Metrocall's contention that narrowband carriers are entitled to the same "full citizenship" under the Act as is the case for broadband telecommunications carriers.

Since narrowband messaging carriers rely upon monopoly LECs to obtain interconnection of the PSTN to their networks, for decades messaging carriers had no practical means of avoiding being treated by the LECs as mere "customers" rather than co-carriers. Relatively recent statutory and regulatory developments were intended to rectify these inequities. Change began when Congress passed the Omnibus Budget Reconciliation Act of 1993, which, among other things, amended the Communications Act to create the new "Commercial Mobile Radio Service" definition for cellular, PCS and messaging companies. The amendments to Section 332 of the Act also codified the "carrier" status of CMRS operators, and specifically granted the FCC authority to enforce CMRS interconnection rights.⁶

In its CMRS Second R&O,⁷ the FCC promulgated rules to enforce Congress' mandate, and expanded CMRS operators' interconnection rights. In doing so, the FCC adopted the following interconnection requirements: (1) LECs and CMRS providers shall compensate each other for the reasonable costs incurred in terminating traffic on the basis of mutual compensation; (2) LECs shall establish reasonable charges for interstate interconnection provided to CMRS licensees; and (3) LECs shall make available the same type of interconnection arrangements that the LECs make available to any other

⁶ See 47 U.S.C. § 332(c).

⁷ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994) ("CMRS Second R&O").

carriers.⁸ Id. at ¶ 232-234. This was the first time that the FCC addressed specific rates and cost-sharing arrangements for LEC-CMRS interconnection.

It is fair to say that these heightened statutory and regulatory interconnection requirements, at least with regard to narrowband carriers, were subsequently obeyed by the LECs far more in the breach than in the observance. In the ensuing years, every LEC in the nation uniformly ignored their statutory and regulatory obligations to compensate narrowband CMRS carriers for calls terminated on narrowband networks. Indeed, it was not until sometime in 1998 that any messaging carrier began receiving some compensation from a LEC for terminating local calls.

The Telecom Act, and the FCC's efforts to implement it, should have finally given the messaging industry the effective legal relief and compensation that the FCC had previously striven to accomplish. The LEC/CMRS interconnection rules adopted by the FCC in its Interconnection Order accurately reflected the statutory obligations imposed on *all* LECs by the Telecom Act. In adopting the Telecom Act, Congress sought to break-down the local telephone network to its basic elements, thereby promoting competitive access to that local market.⁹ See Conference Report, accompanying Senate Bill 652 (the Telecom Act). Consistent with that goal, Section 251(b) of the Telecom Act, upon which the FCC's interconnect rules are based in part, states that LECs have the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."¹⁰

⁸ Id. at ¶ 232-234.

⁹ See H.R. Rep. No. 104-458, 104th Cong. 2d Sess. ("Conference Report"), accompanying Senate Bill 652 (the Telecom Act).

¹⁰ See 47 U.S.C. §251(b).

The FCC's Interconnection Order made several findings and conclusions that are critical to ensuring fair and equitable compensation for messaging carrier termination of local exchange traffic. The FCC concluded that "a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic", and, as of the "effective date" of that FCC Order (August 30, 1996), the LEC "must provide that [LEC-originated] traffic to the CMRS provider or other carrier without charge." ¹¹

Moreover, the FCC declared that "LECs are obligated ... to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks" ¹² The FCC concluded that any CMRS provider that is operating under an interconnection agreement that was entered into prior to August 8, 1996, may renegotiate that contract if the agreement does not provide reciprocal compensation. The FCC noted that the LECs' "mutual compensation" obligations predate the Telecom Act, and are required under Section 20.11 of the FCC's rules. ¹³

The FCC admittedly did not finish the task of establishing reciprocal compensation proxies and rules for paging carriers in its Interconnection Order. With respect to two-way CMRS operators, the FCC concluded that "presumptive symmetrical rates [should be] based on the incumbent LEC's costs for transport and termination of

¹¹ Interconnection Order at ¶ 1042.

¹² Id. at ¶ 1008 (emphasis added).

¹³ Id. at ¶ 1094.

traffic."¹⁴ Interconnection Order at ¶ 1092. The FCC also concluded; however, that paging networks and traffic are different than two-way CMRS networks:

While paging providers, as telecommunications carriers, are entitled to mutual compensation for the transport and termination of local traffic, and should not be required to pay charges for traffic that originates on other carriers' networks, we believe that incumbent LECs' forward-looking costs may not be reasonable proxies for the costs of paging providers. Given the lack of information in the record concerning paging providers' costs to terminate local traffic, we have decided to initiate a further proceeding to try to determine what an appropriate proxy for paging costs would be and, if necessary, to set a specific paging default proxy.¹⁵

That is where the issue stands today. Metrocall respectfully submits that the time is long overdue to finish the FCC's work in this area. The messaging industry is eminently entitled to, and prepared to assist the FCC in formulating, rules that will govern compensation to messaging carriers for their transport and termination of local traffic. Moreover, in light of FCC primacy over LEC/CMRS interconnection matters, and the interstate nature of messaging services, it makes eminent good sense and good law for these matters to be resolved exclusively before the FCC, rather than before 50 different and potentially conflicting state utility commissions.

IV. FCC Inaction has Harmed the Messaging Industry

The FCC's delay in addressing the issue of rate symmetry for narrowband carriers has unquestionably led to serious, anticompetitive harm to narrowband carriers. Narrowband carriers now face direct competition from broadband carriers, many of whom are affiliated with LECs; short messaging services are being offered over PCS networks which compete directly against the basic service offerings of messaging carriers. So, while broadband carriers benefit from greater spectrum allocations; they are

¹⁴ Id. at ¶ 1092.

¹⁵ Id. (emphasis added).

also able to take advantage of the “full citizenship” the FCC has afforded them under its reciprocal compensation rules, including higher compensation rates for performing the same termination functions that narrowband carriers perform. Narrowband carriers, by contrast, must plead with LECs for the limited compensation they currently receive, and then, they must accept whatever terms and conditions the LECs deign to toss their way.

Those narrowband carriers that have elected to attempt adjudicating their claims against LECs before state PUCs have learned how expensive and time-consuming that process may be, with results that are often at odds with FCC rulings. To make matters worse, when messaging carriers have formally complained to the FCC about LEC violations of federal interconnection rules, the agency’s response has been conspicuously prolix.

All of this could have been avoided if the FCC had clearly stated at the outset that narrowband carriers were entitled to symmetrical rates. Then, as has been the case for broadband carriers, narrowband carriers could either have accepted the LEC termination costs as their own, or, they could have had the option of preparing a TELRIC study to justify a higher compensation rate. In either case, narrowband carriers would at least have had a fighting chance in interconnection negotiations with LECs, and in competing in the messaging marketplace against broadband carriers.

With less spectrum at their disposal than the broadband sector, and with an agency that has yet to grant these carriers full interconnection rights, the messaging industry has truly been fighting with both hands tied behind its back for several years. It is a testament to the remarkable tenacity and resilience of the messaging industry that it has managed to succeed in the marketplace for so long, despite these regulatory

handicaps and the repeated pummeling of certain anticompetitive LECs. Rather than continue to favor one industry sector at the expense of another, the FCC ought to take the opportunity presented by Sprint PCS's Request to redress these wrongs, and to acknowledge that narrowband carriers are entitled to the same call termination compensation rates as would be the case for any CMRS carrier.

CONCLUSION

For all the foregoing reasons, Metrocall respectfully requests that the Commission clarify in this proceeding that narrowband carriers are entitled to the same reciprocal compensation rights as broadband CMRS carriers, and, that the FCC assert primary or exclusive jurisdiction to enforce CMRS carrier compensation rights against recalcitrant LECs.

Respectfully submitted,

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Certificate of Service

I, Rhonda M. Johnson, hereby certify that the foregoing COMMENTS OF METROCALL, INC. were served this 1st day of June, 2000, by mailing true copies thereof, by United States First-Class Mail, postage prepaid, to the following:

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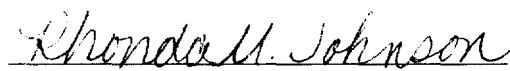
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